

The Amendments

Claims 8 and 21 have been amended to clarify the intended meaning. It is respectfully submitted that the minor changes have not narrowed the scope or added new matter. On the contrary, the amendments merely clarify and emphasize elements inherently present.

The Rejection of Claims 8-14, 18, 21-27, 31, and 34 Under 35 U.S.C. § 112, second paragraph

All pending claims stand rejected as indefinite. This rejection is respectfully traversed.

Claim 8 as amended recites:

...said polypeptide comprising a contiguous portion of CFTR protein of between about 18 and 100 amino acid residues, said portion comprising the 18 contiguous amino acid residues shown in SEQ ID NO:1....

The Patent and Trademark Office urges that it is unclear whether additional residues in excess of 18 are also contiguous sequences of SEQ ID NO:1. The additional residues, however, cannot be from SEQ ID NO:1 because SEQ ID NO:1 contains only 18 residues. This point is emphasized by the current amendment which refers to the 18 contiguous amino acid residues shown in SEQ ID NO:1.

Thus, the recited contiguous portion of CFTR protein can be any portion of CFTR protein which contains the sequence shown in SEQ ID NO:1 and not more than 82 other residues of CFTR protein which are contiguous with the sequence of SEQ ID NO:1.

Claim 21 similarly recites:

...said polypeptide comprising a contiguous portion of CFTR protein of between 22 and 100 amino acid residues, said portion

comprising the 22 contiguous amino acid residues shown in SEQ
ID NO:2....

The sequence of SEQ ID NO:2 contains only 22 residues, thus the remaining possible 78 residues of the portion of CFTR must come from other sequences of CFTR contiguous to the 22 residues.

It is respectfully submitted that the amendments and explanations clarify any possible indefiniteness that was previously observed.

Claims 8 and 21 are also said to be incomplete for failing to recite allegedly essential steps. Each of the claims recites “applying a polypeptide to a CFTR protein.” The result of the step of applying is that the open probability of the channel formed by the CFTR protein increases by at least 25%. The Patent and Trademark Office urges that a step of measurement of the open probability is required. This assertion is respectfully traversed.

One can readily practice the invention without a step of measuring. Measuring may be required to determine if someone practicing the claimed method were infringing. But measuring is not required to activate a CFTR protein. Someone could readily activate a CFTR protein the required amount without ever performing a measurement step. For example, a practitioner could read a protocol which prescribed a certain dosage and use that dosage to achieve the required effect. No measurement by the practitioner would be required.

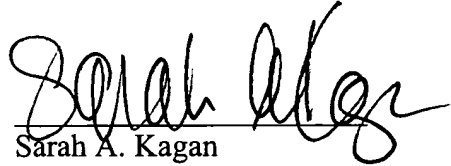
MPEP § 2172.01 describes essential matter, such as missing steps, as matter which the applicant may have described “as necessary to practice the invention.” Applicants did not describe measurement as a necessary step. Since the invention is a

method of activating a CFTR protein and not a method of determining whether one infringes a claim, the step of measuring the open probability is not an essential step.

All claims as amended are definite and complete. Allowance of all claims is respectfully requested.

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Respectfully submitted,


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